

## **2-3.000**

# **RESPONSIBILITIES AND STEPS TO BE TAKEN IN COURTS OF APPEALS IN CIVIL AND CRIMINAL CASES**

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## **2-3.100**

### **Assignment of Appellate Responsibility**

Except as otherwise provided by sections 2-3.200, 2-3.210 and 2-3.220, the United States Attorney has the appellate responsibility for the handling of civil and criminal cases in the court of appeals that have been handled by the United States Attorney in the district court, unless the appropriate Assistant Attorney General determines otherwise.

### **2-3.110 Appeal Authorization Process**

The United States Attorney's Office (USAO), having litigated a matter in which was rendered a decision adverse to the United States, should be kept apprised by the appellate components of the Department during the appeal determination process once the matter has been referred to the Office of the Solicitor General and the appropriate litigating division within the Department.

In this regard, the Office of the Solicitor General and the appropriate appellate section will promptly communicate with the concerned United States Attorney's Office regarding its anticipated appellate recommendation where such recommendations will be contrary to that of the United States Attorney in order to allow for an exchange of views. This communication should occur within a reasonable time before the final decision by the respective office on the appellate matter is made so that the United States Attorney can make known his or her views. The Office of the Solicitor General will communicate its decision in like fashion to the concerned appellate sections of the litigating division within a reasonable period of time before the final decision on the appellate matter is made, when that decision is contrary to the recommendation of the affected appellate section.

Other communication outside of that outlined herein is recommended and encouraged to facilitate greater input from the trial attorney(s) and should include, but is not limited to, copies of internal memoranda recommending for or against some significant appellate action.

### **2-3.200 Appeals in Tax Cases**

The Tax Division reserves to itself the authority to handle appeals in all civil tax cases without regard to whether the United States Attorney or a Tax Division attorney has tried the case.

### **2-3.210 Appeals in Civil Rights Division Cases**

The Assistant Attorney General, acting through the Chief of the Appellate Section, will determine whether appeals in civil rights cases will be handled by the United States Attorney or the Division. Factors that will be considered in assigning appellate responsibility include the complexity of the civil rights issues in the case and their importance to the Division, and the availability of resources.

### **2-3.220 Appeals in Civil Division Cases**

Where the Solicitor General has authorized an appeal in a case handled in the trial court by a United States Attorney, the Assistant Attorney General, acting through the Director of the Appellate Staff, will notify the United States Attorney of the assignment of appellate responsibility as soon as possible, but no later than receipt of notice that the Solicitor General has authorized the appeal. Where an opposing party takes an appeal from a judgment favorable to the government in a case handled by the United States Attorney in the trial court, the United States Attorney can normally assume that his/her office will handle the appeal, unless the Director of the Appellate Staff advises otherwise within 14 days after receipt from the United States Attorney of notification of the appeal. In order for the automatic assignment procedure to be operative, it is crucial that the United States Attorney notify the Appellate Staff promptly when a party files a notice of appeal, and forward to the Staff a copy of the district court opinion and any other papers that may be necessary to understand the issues in the case.

### **2-3.221 Settlement of Civil Division Cases on Appeal**

Once a notice of appeal is filed by any party in a Civil Division case, any settlement that would otherwise be within the settlement authority of the United States Attorney must be referred to the Assistant Attorney General for approval, "except as determined by the Director of the Appellate Staff." 28 C.F.R. Pt. 0, Appendix to Subpart Y, Section 1(e)(5). The United States Attorney should forward any proposed settlement to the Director of the Appellate Staff who will be responsible for securing any necessary approval of the settlement and, where necessary, obtaining advice from the Solicitor General that the settlement can go forward. *See* 28 C.F.R. 0.163.

### **2-3.222 Special Procedures for Adverse Decisions in Civil Division Cases Concerning Social Security Benefits Claims**

In any Social Security Act case involving a claim for benefits in which the district court renders a decision adverse to the government, the United States Attorney handling the case shall immediately forward copies of the adverse decision, including both the opinion and judgment, to:

- (A) Office of the General Counsel  
Social Security Administration

Post Office Box 17054  
Baltimore, Maryland 21203

(B) SSA Regional Chief Counsel

The United States Attorney is relieved of the responsibility of sending adverse social security benefits decisions rendered by a district court (or a magistrate) to the Civil Division unless the United States Attorney recommends appeal, or the United States Attorney is advised that SSA is recommending appeal. Please note that all court of appeals decisions in social security cases must still be sent to the Appellate Staff in the same manner as any other court of appeals decision.

The above addresses for SSA are to be used only for transmission of decisions in cases seeking benefits under the Social Security Act. In transmitting such items to SSA the United States Attorney shall use the Transmittal Form for Social Security Benefits Cases. *See* Appeals Resource Manual. In general, litigation materials which are of a non-critical nature (i.e., do not require an expeditious response from SSA), should be forwarded to the following address:

Office of the General Counsel  
Social Security Administration  
6401 Security Boulevard  
Baltimore, Maryland 21235

In all Social Security Act cases in which the claim is for benefits, the United States Attorney is relieved of the responsibility for filing a notice of appeal unless specifically requested to file such a notice of appeal by the Civil Division in Washington, D.C.